

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HERNAN O'RYAN CASTRO,

Plaintiff,

No. C 09-00589 JSW

v.

UNITED STATES OF AMERICA,

Defendant.

**ORDER SETTING BRIEFING
SCHEDULE**

This matter is set for a hearing on June 26, 2009 on Defendant United States of America's motion to dismiss for lack of subject matter jurisdiction, or in the alternative, motion for summary judgment. The Court HEREBY ORDERS that an opposition to the motion shall be filed by no later than **May 22, 2009** and a reply brief shall be filed by no later than **May 29, 2009**.

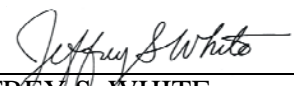
If the Court determines that the matter is suitable for resolution without oral argument, it will so advise the parties in advance of the hearing date. If the parties wish to modify this schedule, they may submit for the Court's consideration a stipulation and proposed order demonstrating good cause for any modification requested.

Plaintiff should be aware that failure to oppose a proper motion for summary judgment may result in the dismissal of this case with prejudice. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end Plaintiff's case. *See Rand v. Rowland* 154 F.3d 952, 953-54 (9th Cir.1998) (en banc). A principal purpose of the summary judgment procedure is to identify and dispose of factually supported claims. *See Celotex Corp.*

1 v. *Cattrett*, 477 U.S. 317, 323-24 (1986). In order to withstand a motion for summary
2 judgment, the opposing party must set forth specific facts showing that there is a genuine issue
3 of material fact in dispute. Fed. R. Civ. P. 56(e). A dispute about a material fact is genuine “if
4 the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In the absence of such facts, “the
6 moving party is entitled to a judgment as a matter of law.” *Celotex Corp.*, 477 at 323. In
7 opposing summary judgment, Plaintiff is not entitled to rely on the allegations of his complaint.
8 See Fed. R. Civ. P. 56(e); cf. *S. A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines) v.*
9 *Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that “a party cannot
10 manufacture a genuine issue of material fact merely by making assertions in its legal
11 memoranda”). Rather, Plaintiff’s response must set forth specific facts supported by admissible
12 evidence, i.e., affidavits or certified deposition testimony, showing that there is a genuine issue
13 for trial. See *id.*; see also *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting
14 *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995), and stating that it is not a
15 district court’s task to “scour the record in search of a genuine issue of triable fact”). If
16 summary judgment is granted, Plaintiff’s case will be dismissed and there will be no trial. See
17 *Rand v. Rowland* 154 F.3d at 953-54.

18
19 **IT IS SO ORDERED.**

20
21 Dated: May 7, 2009

22 
23 _____
24 JEFFREY S. WHITE
25 UNITED STATES DISTRICT JUDGE
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HERNAN O'RYAN CASTRO,

Case Number: CV09-00589 JSW

Plaintiff,

CERTIFICATE OF SERVICE

v.

USA et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 7, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Hernan O'Ryan Castro
15 Carleton Avenue
Daly City, CA 94015-3805

Dated: May 7, 2009


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk